RECENT IMPORTANT DECISIONS

BANKRUPTCY—DISCHARGE OF BANKRUPT FROM ARREST—CLAIMS—JUDGMENT—WILLFUL AND MALICIOUS INJURY.—Petitioner, a school teacher, attempted to chastise a pupil for breach of discipline. On his resistance she persisted in chastisement until it was claimed she inflicted injuries on the child for which a judgment was recovered in the state court for willful and malicious injury. Subsequent to this judgment but prior to execution upon it petitioner was adjudged a bankrupt on her voluntary petition. Before discharge execution was taken out and she was arrested, but released on habeas corpus. Subsequently she received her discharge in bankruptcy. On final hearing on the question whether the discharge in bankruptcy worked as a release of the liability on the judgment, *held*, that from the record the injury was neither willful nor malicious and the judgment was therefore released by petitioner's discharge in bankruptcy. *United States ex rel. Kelley* v. *Peters*, (1909), — D. C., E. D. Ill. —, 166 Fed. 613.

On arrest upon process in any civil action founded on a claim provable in bankruptcy the court on habeas corpus proceedings may discharge the bankrupt from imprisonment. Gen. Orders in Bankruptcy, 30, 89 Fed. XII, Bankruptcy Act July 1, 1898, c. 541. § 9a, U. S. Comp. St. 1901, p. 3425. *Barrett* v. *Prince*, 143 Fed. 302, 74 C. C. A. 440; *In re Fife*, 109 Fed. 880. A discharge in bankruptcy shall release a bankrupt from all his provable debts except such as (2) * * * are liabilities for willful and malicious injuries to person or property of another. § 17, of Bankruptcy Act, supra. An action grounded on tort is necessarily willful. *Lavery* v. *Crooke*, 52 Wis. 613, 9 N. W. 599. The injury for which judgment was obtained must be more than willful; it must be with malice—with an evil intent to injure the person or property of the plaintiff. *In re Sullivan*, 2 A. B. R. 30. It was for the court here to determine for itself whether the assault was willful and malicious, in determining whether judgment was one from which the discharge in bankruptcy would constitute a release.

BILLS AND NOTES—ANOMALOUS INDORSER.—In 1903 A made a note payable to the plaintiff. Defendants signed upon the back thereof before delivery. In 1905 the Negotiable Instruments Law was enacted (Act April 10, 1905; Laws 1905, p. 251) providing that one signing an instrument otherwise than as maker is deemed to be an indorser unless he clearly indicates his intention to be bound in some other capacity. The note in suit was given in 1906 as renewal of the former instrument, and under the same circumstances as previously. *Held*, that the anomalous indorsement created the relationship of indorser in due course. *Walker* v. *Dunham et al.*, (1909), — Mo. App. —, 115 S. W. 1086.

The court interpreted the statute as reversing the case of *Powell et al.* v. *Thomas*, 7 Mo. 440, 38 Am. Dec. 465, by which decision a person so indorsing a promissory note in blank was held to be a joint maker. That decision was

not questioned until the enactment of the statute of 1905. § 195 of the act (Ann. Stat. 1906, § 463) declares that its provisions do not apply to negotiable instruments made and delivered prior to the passage of the law. The court said that the fact that the note in suit was given as a renewal of one made in 1903 did not change the effect of the act upon the note, which was regarded as of the year 1906. This general subject was discusesd by the Court of Appeals of New York in a recent case in which the same conclusions were reached. The court there recognized that before the passage of the Negotiable Instruments Law such a signature raised the presumption of the relation of second indorser as held in *Moore* v. *Cross,* 19 N. Y. 227; *Haddock, Blanchard and Co.* v. *Haddock,* 192 N. Y. 499; 85 N. E. 682; decided Sept. 29, 1908. For further discussion of this subject see 7 MICH. L. REV. 509.

BILLS AND NOTES—INNOCENT HOLDER OF NOTE GIVEN ON THE SALE OF "FUTURES."—The plaintiff seeks to recover upon a note which was given in payment of debts incurred under contracts for the purchase of "futures" in cotton. The Statutes of Mississippi (Ann. Code 1892, § 2117) provide that such contracts shall not be a valid consideration for any promise. The defendant is the maker of the note and the plaintiff an innocent holder for value. *Held,* that there can be no recovery upon the note. *Gray.* v. *Robinson,* (1909), — Miss. —, 48 South 226.

As a general rule wagers were not illegal at the common law, but by statute in the states they have generally been declared to be so. A bona fide contract for the future delivery of any article is valid, but if the contract amounts to the mere staking of margins to cover the difference between the price of the article at the time of purchase and the time of delivery, it is void. DANIEL, NEGOTIABLE INSTRUMENTS, Ed. 5, § 195; *Bigelow* v. *Benedict,* 70 N. Y. 202; *Kahn Jr.* v. *Walton et al.* 46 Oh. St. 197. BISHOP, CONTRACTS, § 534. When the statute merely declares either expressly or by implication that the consideration shall be deemed illegal, the note founded upon such consideration is generally deemed valid in the hands of a bona fide holder without notice. *Sondheim* v. *Gilbert,* 117 Ind. 71. Statutes involving such contracts are to be strictly construed in favor of the bona fide holder. *Shaw* v. *Clark,* 49 Mich. 384. The rule of construction was stated by SAVAGE, C.J., in the case of *Vallet* v. *Parker,* 6 Wend. 615, as follows: "Wherever the statutes declare notes void they are and must be so, in the hands of every holder, but where they are adjudged by the courts to be so, for failure of or illegality of the consideration they are void only in the hands of the original parties, or those who are chargeable with or have had notice of the consideration." In a recent Iowa case the court said: "The true rule is announced in *Vallet* v. *Parker,* (supra), to the effect that a note even if founded upon illegal and immoral consideration is valid in the hands of a good faith holder, unless there be a positive statute declaring such instrument void." *Henry* v. *State Bank,* 131 Ia. 97.